United Nations

A/HRC/WG.12/16/1

General Assembly

Distr.: General

8 June 2017

English only

Human Rights Council

Working Group on the issue of human rights and transnational corporations and other business enterprises

Fifteenth session

Geneva, 13–17 February 2017

Outcome of the sixteenth session of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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GE.17-09302(E)

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I. Summary

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its sixteenth session in Geneva, Switzerland from 13 to 17 February 2017.

2. During the session, the Working Group convened meetings and discussions on the following:

(a) The Working Group's priorities and projects for 2017;

(b) regional consultations;

(c) three open consultation meetings, respectively with States and intergovernmental organizations, business associations, and civil society organizations, to consult on the Working Group's plans and to seek input on specific projects;

(d) plans for the sixth annual Forum on Business and Human Rights to be held in Geneva, Switzerland from 27 to 29 November 2017 and a possible Regional Forum in 2018;

(e) other Working Group projects and meetings, including its 2017 country visits;

(f) the Working Group's collaboration with the OECD, the ILO and the African Union;and

(g) the Working Group's 2017 reports to the 35th session of the Human Rights Council and the 72nd session of the General Assembly, in relation to which the Working Group held two expert consultations.

3. The present report summarizes some of the key items discussed.

II. Working Group priorities and projects for 2017

4. The Working Group discussed its work on national action plans on business and human rights (NAPs) and the launch of the final version of its Guidance on National Action Plans (Guidance) during the fifth annual Forum on Business and Human Rights. The Guidance was prepared in the lead-up to the Forum on the basis of input received during consultations with stakeholders that have used the first and second versions of the Guidance published in November 2014 and November 2015, respectively. The Guidance also drew on the comments provided by 23 States in their responses to the Working Group's 2016 State Survey. The Working Group was grateful for these responses and welcomed the interest that States are showing in NAPs. It noted that since its fifteenth session four more States (Switzerland, Italy, the USA and Germany) have released NAPs and the Working Group encouraged other States to follow suit. The Working Group had a preliminary discussion about the content of the NAPs that States have prepared. The Working Group recalled that the Human Rights Council in resolution 26/22 encouraged all States to develop a NAP, noting the important role that NAPs can play as a tool for promoting the comprehensive and

effective implementation of the Guiding Principles on Business and Human Rights (Guiding Principles).

5. The Working Group discussed its plans for its country visits during 2017. The Working Group will visit Canada from 23 May to 1 June and Peru from 10 to 19 July. The Working Group discussed its preferences for country visits during 2018 and the coming years. It reiterated its wish to take a regionally balanced approach to the countries and regions it visits, and as such it expressed a particular interest in visiting countries in Africa, Eastern Europe and Asia-Pacific during 2018 and 2019.

6. The Working Group continued its prior discussions concerning its priorities for 2017-2018, particularly its intended focus on the issue of access to remedy and the implementation of the Guiding Principles by small and medium sized enterprises (SMEs) in its reports. The Working Group also reiterated its interest in working on issues relating to: gender and women's rights; human rights defenders; the UN Sustainble Development Goals (SDGs) e.g. by highlighting the foundational role of the Guiding Principles in the SDGs in a position paper, and focusing on the interaction between the Working Group and the UN regional commissions concerning the implementation of the SDGs; banking, finance and international investment agreements; State-Owned Enterprises, public procurement and other elements of the state as an economic actor; and NAPs. The Working Group also discussed its communications policy and its approach to issuing public statements in order to facilitate the Working Group's intervention in cases relevant to its mandate. Moreover, the Working Group reiterated that it has a key role to play in interpreting the application of the Guiding Principles and key concepts relating to how the obligations and responsibilities set out in the Guiding Principles should be understood concretely, including in the context of specific sectors. In this regard, it expressed its interest in offering its feedback on the discussion paper published by the Thun Group of Banks, "on the implications of UN Guiding Principles 13 and 17 in a corporate and investment banking context" on 25 January 2017.

7. Working Group members provided updates on the meetings and outreach exercises they have undertaken since the fifteenth session, including the attendance by one member of the Working Group at the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises held during October 2016, and at the fifth session of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies held during December 2016.

8. The Working Group discussed the Committee on Economic, Social and Cultural Rights' draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. It noted that the Committee would hold a Day of General Discussion on 21 February 2017 at Palais Wilson. The Working Group noted that it would not be able to attend the meeting in person but that it intended to submit written comments on the draft to the Committee. The Working Group also discussed the OECD's draft due diligence guidance for responsible business conduct. It noted that it would submit written comments on the draft to the OECD as part of the OECD's consultation process and that the guidance is due to be finalised during 2017.

III. Reports to the Human Rights Council and the General Assembly

9. The Working Group discussed the theme of its report to the 35th session of the Human Rights Council which will focus on the uptake of the Guiding Principles by SMEs. During the session the Working Group held an expert consultation in connection with this report. The consultation focused on the effectiveness of initiatives to support SMEs in their responsibility to respect human rights. It referred to the SMEs survey that was conducted during 2016 by the International Organisation of Employers (IOE) jointly with the ILO and co-sponsored by the Working Group in order to better understand the challenges, concerns and opportunities facing SMEs with regard to business and human rights. The discussions during the meeting included an update from the Working Group on the key challenges facing SMEs in the implementation of the Guiding Principles (including good practices to overcome key challenges driven by SMEs, lead companies at the top of a supply chain, States, and international organisations), a roundtable discussion of opportunities for the implementation by SMEs of the Guiding Principles (including the indentification of SMEs' policies and practices relevant to this work) and closing remarks focusing on the challenges and opportunities going forward.

10. The Working Group discussed its report to the 72nd session of the General Assembly on access to remedy, and in particular developing a 'victim-centric' framework for accessing remedies and unpacking what an effective remedy means in the context of business and human rights. The Working Group noted its earlier decision to focus on other aspects of access to remedy in subsequent reports over the coming years. In planning its own work on access to remedy, the Working Group reflected on the outcome of the OHCHR-led Accountability and Remedy Project, and report "Improving accountability and access to remedy for victims of business related human rights abuse" (A/HRC/32/19) and the addendum (A/HRC/32/19/Add.1). It reiterated its resolve that its own work on access to remedy would complement and build on the work already undertaken in this field. The Working Group reflected on the outcome of a consultation held in Geneva during December and noted that additional consultations would be held (including during the 17th session, to be held during May 2017) to supplement research done during the first half of 2017.

11. The Working Group also discussed the study "on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights" that it was asked to prepare under Human Rights Council resolution 32/10. The Working Group noted that this study would be presented to the 35th session of the Human Rights Council and that the work on the report would need to be completed by the end of April. The Working Group noted that it had sent a questionnaire to States to solicit information for this study, and find concrete examples of investigations and prosecutions in cross-border cases, the agencies involved in these investigations and prosecutions, how they cooperated amongst each other, and what problems they faced and how these problems were or could have been overcome. The deadline for submitting responses was 28 February. In connection with this report, the Working Group held an expert consultation during the session. The consultation focused on best practices in cross border cooperation in: human rights related prosecutions, cases involving economic actors e.g. cases concerning economic crimes (corruption, bribery, money laundering, and sanctions violations); environmental crimes (toxic dumping/toxic spills, illicit trade in natural resources and

endangered species); trade in conflict commodities (commodities, timber, diamonds and metals); and human trafficking, forced and child labour. It also addressed treaty mechanisms and cross border networks and looked at what treaty mechanisms have been established that have improved cross-border cooperation in relation to the above listed areas. Finally, the consultation considered best practice in the collection of evidence in corporate crimes and whether there are practices that more effectively enable law enforcement and courts to gather evidence. The Working Group acknowleged that the report would build on and supplement the outcome of the OHCHR-led Accountability and Remedy Project, and the recommendations in the report "Improving accountability and access to remedy for victims of business related human rights abuse" (A/HRC/32/19) and the addendum (A/HRC/32/19/Add.1).

12. The Working Group also discussed the possibility of preparing a report on public procurement as an addendum to its report to the Human Rights Council. This would focus on the learning and best practices shared during two sessions on public procurement held during the annual Forum and at a side-event subsequent to the annual Forum. The Working Group decided that it would share in the report best practice and points raised during these sessions.

IV. Feedback on the fifth annual Forum on Business and Human Rights and plans for the sixth annual Forum in 2017

13. In accordance with its mandate from the Human Rights Council to guide the annual Forum on Business and Human Rights, the Working Group discussed the feedback received in relation to the fifth annual Forum, held in Geneva, Switzerland, from 14 to 16 November 2016. It noted that the Forum's title "Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy" had generated a lot of interest amongst stakeholders and that the core elements of the programme were: States should "lead by example"; Leadership and leverage should be exercised by all enterprises that make up the value chain; Better models of action and accountability are needed to drive companies' respect for human rights and their contribution to the implementation of the Sustainable Development Goals; and Improvements are needed in relation to access to remedy for victims of human rights abuses and protection for those in vulnerable positions.

14. The Working Group observed that the Forum was attended by more than 2,000 participants from 140 countries, up from some 1,000 registered participants from 80 countries at the first Forum in 2012 and that 55 percent of registered participants were women. The Working Group noted that there were plenary sessions and 64 parallel sessions which were informed by some 160 session proposals submitted by a wide range of organisations, and that the interest in the Forum was growing from year to year.

15. The Working Group made firm plans for the sixth annual Forum, to be held in Geneva, Switzerland from 27 to 29 November 2017. It had previously decided that the Forum will include a major focus on the third pillar of the Guiding Principles – access to remedy for victims – addressing all the types of mechanisms covered in the Guiding Principles, from judicial and state-based non-judicial mechanisms to non-state-based mechanisms. The Working Group discussed in greater detail how this would be reflected in the Forum programme. The focus on access to remedy

provides a chance to strengthen multi-stakeholder dialogue around practical solutions and constructive methods to enable the human rights of people affected by business activity to be realised. In order to inform preparations, the Forum Secretariat is conducting a mapping of ongoing research and projects linked to this topic. The Working Group noted that all stakeholders have been encouraged to submit brief information via an online form about ongoing or planned research and projects for 2017-18 related to the issue of access to remedy in the context of business and human rights.

16. The Working Group Group informed stakeholders that the call for applications for proposals would be opened in March 2017 and that information would be posted on its website with a request for proposals to be returned by the end of May 2017.

17. The Working Group noted that, as in 2016, it would be important to apply criteria when selecting proposals in order to make sure that the Forum programme was balanced, cohesive, constructive and reflective of the chosen focus areas. The Forum programme would continue to include a mixture of formats, such as high-level plenary sessions, case study discussions and panel discussions, and would continue to aim to provide an constructive environment in which new tools and initiatives, salient issues and practical implementation challenges could be openly discussed by all stakeholders.

18. The Working Group reflected on the challenges of making sure that participation increased from the Global South, and reiterated that it wanted representatives from affected communities to attend and be heard. It noted that budgetary constraints make it impossible for the Working Group and OHCHR to facilitate travel expenses for anything other than a small number of speakers.

19. The Working Group reiterated its long-stated hope and expectation that States would encourage experts and policy-makers from capitals to attend, in addition to Geneva-based diplomats. It also noted that the Forum was attracting an increasing number of representatives from companies, business associations, law firms, investors and other representatives from the private sector. The Working Group stated that it remains keen to achieve balanced stakeholder participation in the Forum from States, business, civil society, and communities directly affected by business operations, as well as gender balance of speakers, in keeping with the Forum's aim to be an open event capable of generating constructive dialogue and problem solving.

20. The Working Group continued its discussions about its wish to hold another Regional Forum, following on from the Regional Forum on Business and Human Rights for Asia held in Doha, Qatar from 19 to 20 April 2016. The Working Group noted that holding a Regional Forum is an extra-budgetary activity that requires significant voluntary financial contributions in order to take place. It reiterated that it thinks that Regional Fora are valuable activities that enable region-specific topics to be discussed with a wide range of stakeholders, and that it has received positive feedback from participants who indicated that they found it helpful and stimulating to participate in Regional Fora. It stated that it would like to be in a position to covene another Regional Forum in the near to mid term, should funding be offered. It emphasised that funding needed to be in place well in advance to enable plans to be made in a timely and efficient manner. As has been its practice to date, the Working Group noted that a regionally balanced approach is important. As

such, it observed that it had already held Regional Forums for the African, Asian and Latin America and the Caribbean regions.

V. Regional consultations

21. The Working Group discussed the outcome of the second meeting on business and human rights held from 17 to 19 January 2017 in Santiago, Chile. The meeting was titled "Second Regional Consultation for Latin America and the Caribbean about the implementation of the Guiding Principles on Business and Human Rights, within the framework of the 2030 Agenda for Sustainable Development". It was organised jointly with the OHCHR Regional Office for South America and was held at the Economic Commission for Latin America and the Caribbean (ECLAC). The Working Group expressed its thanks for the support of the OHCHR Regional Office for South America and ECLAC. It also noted the increased interest in the topic in the region, including at a senior and ministerial level from governments in the region. The Working Group reiterated the importance of robust engagement with business, civil society organizations, and affected stakeholders, including indigenous peoples. It observed that civil society engagement was strong and that there was vocal representation from indigenous peoples. It stated that it hopes to be able to hold such consultations in other regions of the world, subject to funding and support from States and other parts of the UN system. A third event for Latin America and the Carribbean is likely to be held at the end of 2017. The Working Group noted that by the time the third event is held it anticipates that around three NAP processes should be underway in the region.

22. The Working Group also discussed its interest in participating in an event on business and human rights for the ASEAN region to be held in Bangkok, Thailand at the end of May 2017. It supports the principle of multi-stakeholder events to discuss the implementation of the Guiding Principles and the advancement of the business and human rights agenda, including in the context of pursuing the 2030 Sustainable Development Agenda. The Working Group is pleased to see the interest in this area in the ASEAN region.

VI. Meetings and briefings with stakeholders

23. The Working Group held a meeting with OHCHR staff and received an update on: the OHCHR-led work on access to remedy including the current work plan and anticipated future work streams, particularly with reference to request in Human Rights Council resolution 32/10 for the High Commissioner for Human Rights to "identify and analyse lessons learned, best practices, challenges and possibilities to improve the effectiveness of State-based non-judicial mechanisms that are relevant for the respect by business enterprises for human rights, including in a cross-border context" and the report that is due to be presented by OHCHR to the 38th session of the Human Rights Council; the outcome of the second session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights to be held in Geneva from 24 to 28 October 2016 and plans for the third session from 23 to 27 October 2017; and the preparations for the database of business enterprises in accordance with Human Rights Council resolution 31/36. The Working Group appreciated the input provided by OHCHR staff.

24. The Working Group met with Office representatives of the ILO and discussed areas for collaboration and cooperation between the ILO and the Working Group. Representatives from the Office of the Director General for Policy, the Enterprises department, the International Labour Standards department, the Labor Law and Reform Unit, and the Fundamental Principles and Rights at Work Branch attended the meeting. The following items were discussed: the Working Group's plans for its reports to the Human Rights Council and the General Assembly in 2017; feedback on the fifth annual Forum on Business and Human Rights and plans for the sixth annual Forum; the Working Group's country visits during 2017 and plans for the visit to Canada from 23 May to 1 June 2017; the review process of the ILO's Declaration on Multinational Enterprises and its interpretation procedure; and the conclusions contained in the ILC Report "Decent Work in Global Supply Chains".

25. The Working Group had a telephone meeting with representatives of the OECD in Paris, France to discuss areas of continued collaboration and mutual interest, including in relation to the OECD's due diligence guidance for responsible business conduct, plans for the 2017 annual Forum on Business and Human Rights, and a third joint event on public policy to be held back-to-back with the Global Forum on Responsible Business Conduct due to be held from 28 to 30 June 2017 at the OECD Conference Center, in Paris. The Working Group also heard about the recently launched OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector and soon-to-be-released guidance focused on institutional investors. It also discussed other opportunities for engagement in the context of the OECD's work on responsible business conduct, economic diplomacy and public procurement.

26. The Working Group had a telephone meeting with consultants working with the African Union to discuss the Working Group's provision of advice and assistance to the ongoing process, led by the African Union Commission Political Affairs department, to develop a Policy Framework on the implementation of the Guiding Principles in Africa. The policy framework would be based on the Guiding Principles and the African human rights instruments. The initative originated in commitments made at the 2013 African Regional Forum on Business and Human Rights convened by the Working Group with the support of the African Union.

27. The Working Group met with representatives from the Permanent Mission of Ecuador in connection with the preparations for the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises held during October 2017.

28. The Working Group held a meeting open to all States and intergovernmental organizations. The meeting provided an opportunity for the Working Group to present its work since the fifteenth session and share its work plan for 2017, in particular its reports to the General Assembly and the Human Rights Council, and country visits to Canada from 23 May to 1 June 2017 and Peru from 10 to 19 July 2017. The Working Group provided statistics in relation to the fifth annual Forum on Business and Human Rights. It also discussed its plans for the sixth annual Forum on Business and Human Rights, highlighting its wish for States to send experts from capitals to attend the Forum.

29. The Working Group held a consultation with civil society organizations and met with a range of stakeholders. Participants were able to attend the consultation either in person or by

telephone. The meeting provided an opportunity for civil society organizations to highlight specific topics and cases with the Working Group. It also provided a chance for the Working Group to share details of its 2017 work plan, including its reports to the General Assembly and Human Rights Council. Participants highlighted a range of issues, including: the need for more victims of human rights abuses to attend the annual Forum; the linkages between Internet practices and access to remedy; concerns relating to specific countries and recommendations to the Working Group to seek to undertake country visits; the Working Group's communication procedure; and the process relating to the database of business enterprises in accordance with Human Rights Council resolution 31/36.

30. The Working Group held a consultation with representatives of a number of business associations during which it received feedback on the 2016 annual Forum and gathered input in relation to its work plan discussions and priorities for 2017. Participants were able to attend the consultation either in person or by telephone. The Working Group discussed: the annual Forum; plans for country visits and its reports to the Human Rights Council and the General Assembly during 2017; the SDGs and the Working Group's plan to highlight coherence and the foundational role of the Guiding Principles in the SDGs by publishing a position paper in the near term; and the interaction between the Working Group and the UN regional commissions concerning the implementation of the SDGs. The Working Group discussed its approach to engaging with companies during country visits and the importance it places on hearing from both business and civil society in relation to the cases it deals with during country visits. The Working Group also discussed, in response to a query from a business association, the process relating to the database of business enterprises in accordance with Human Rights Council resolution 31/36 and heard calls for the relevant business enterprises to be given an opportunity to respond to their proposed inclusion in the database.

VII. Chairperson and Vice-Chairperson

31. Michael K. Addo served as Chairperson of the Working Group, and Surya Deva served as Vice-Chairperson. Michael K. Addo will serve as Chairperson, and Surya Deva will serve as Vice-Chairperson until 30 June 2017. Surya Deva will become Chairperson on 1 July 2017.